IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.106 OF 2005

BEST Workers Union ..Petitioner.

Vs.

The Municipal Corporation of
Greater Mumbai & Ors. ..Respondents.

....

Mrs.Neeta Karnik for the Petitioner.

Mrs.A.R.Joshi for Respondent No.1.

Mr.P.M.Palshikar with Ms.Rita Vora for Respondent Nos.2 and 3.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

17th February, 2005.

P.C. :

1. The Industrial Court has dismissed a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 on the ground that it is not maintainable having regard to the decisions of the Supreme Court in Cipla Ltd. v. Maharashtra General Kamgar Union

(2001 I LLJ 231) and in Sarva Shramik Sangh v. Indian Smelting & Refining Co. Limited (2003 III CLR 949).

2. The facts in brief are that the Municipal Corporation passed a resolution on 29th February, 1981 according sanction to run a ferry service between Marve and Manori island through the BEST Undertaking. The contract for the operation and maintenance of the ferry services was awarded to the BEST Undertaking since November 1981. The launches are owned by the Municipal Corporation. The crew and personnel working on the launches were engaged by contractors appointed by the BEST Undertaking.

3. In support of this Petition, it has been sought to be urged that the Industrial Court overlooked the meaning of the expression "employee" in Section 3(13) of the Bombay Industrial Relations Act, 1946 which is defined to include a person employed by a contractor to do any work for him in the execution of a contract with an employer. Hence, it was urged that by the deeming fiction created by the definition in Section 3(13) an employee of a

contractor is deemed to be an employee for the purposes of the Act. In support of this submission, reliance has been placed on behalf of the Petitioner on the judgment of the Supreme Court in the Saraspur Mills Co. Ltd. v. Ramanlal Chimanlal (AIR 1973 SC 2297).

4. In response to this submission, reliance has been placed by counsel for the Second Respondent on a notification dated 4th December, 1946. The notification provides that in exercise of powers conferred by Section 2(3) of the then Bombay Industrial Disputes Act, 1938 the Government of Bombay applied the provisions of the Act to the following industries viz. the conduct and maintenance of public passenger transport services by omnibus or tram within Bombay Municipal limits and the supply of energy within Bombay Municipal limits by concerns or undertakings situated within the said limits. The explanation to the aforesaid notification provided that for the purposes of the notification, all business, trade, manufacture, service and employment connected with the conduct of either of the above industries shall be deemed to be part of the industry concerned when engaged

in by an employer engaged in such industry. A notification has since been issued on 26th April, 1984 under Section 2(4) of the Bombay Industrial Relations Act, 1946. The coverage of the Act has been provided inter alia in respect of industries undertaken by the BEST Undertaking, engaged in the conduct and maintenance of public passenger transport services by omnibus within the limits of the Bombay Municipal Corporation and the areas of New Bombay. The supply of electrical energy by concerns or Undertakings situated within the limits of the Bombay Municipal Corporation is also the subject matter of the notification. The explanation to the aforesaid notification similarly provides that all business, trade, manufacture, service and employment connected with the conduct of any of the industries listed therein shall be deemed to be part of the industries concerned and engaged in by an employer engaged in such industries.

5. Neither of these two notifications, it is an admitted position, were placed for consideration of the Industrial Court. The question which really would fall for consideration is as to whether the

explanation to the notification dated 26th April, 1984 would be attracted because it provides that all business, trade, manufacture, service and employment connected with the conduct of the industries listed therein shall be deemed to be a part of the industries concerned. In my view, it is appropriate and proper that the Industrial Court which did not have the benefit of the aforesaid notification be directed to reconsider the matter and the application filed by the Second Respondent questioning the maintainability of the complaint inter alia in the light of the aforesaid notifications.

6. In order to facilitate a fresh decision by the Industrial Court, the impugned order dated 7th January, 2004 is quashed and set aside. Complaint (ULP) No.603 of 1998 shall stand restored to the file of the Industrial Court. The Industrial Court is directed to reconsider the application filed by the Second Respondent (Exh.G) after hearing the parties. The Petition is allowed to the aforesaid extent. In the circumstances, there shall be no order as to costs.